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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

OMAR RODRIGUEZ; CINDY GUILLEN-
GOMEZ; STEVE KARAGIOSIAN;
ELFEGO RODRIGUEZ; AND JAMAL
CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT;
CITY OF BURBANK; TIM STEHR;
KERRY SCHILF; JAMIE "J.J." PUGLISI;
DAN YADON; KELLY FRANK; PAT
LYNCH; MIKE PARRINELLO; AARON
KENDRICK; DARIN RYBURN; AND
DOES 1 THROUGH 100, INCLUSIVE.

Defendants.

CASE NO: BC 414602

[Assigned to Hon. Joanne O'Donnell,
Dept. 37]

**DEFENDANT'S REPLY IN
SUPPORT OF MOTION IN LIMINE
NO. 1 TO EXCLUDE EVIDENCE OF
(A) THE DISBANDING OF SED AND
PLAINTIFF BEING RETURNED TO
PATROL AND (B) PLAINTIFF NOT
BECOMING AN FTO**

Trial Date: June 8, 2011 (Pltf. Karagiosian)
Discovery Referee: Hon., Diane Wayne, Ret.

Action filed: May 28, 2009

1 **I. PLAINTIFF DOES NOT DISPUTE THAT EVIDENCE REGARDING THE**
2 **DISBANDING OF SED OR HIS FAILURE TO PROMOTE TO FIELD**
3 **TRAINING OFFICER ("FTO") IS IRRELEVANT.**

4 Plaintiff does not even *attempt* in his Opposition to this motion to show that evidence
5 regarding the disbanding of the SED or his failure to promote to FTO would in any way be
6 relevant to his claims that he has suffered severe or pervasive harassment based on his
7 Armenian ethnicity. His purported reliance on the holding in *Roby v. McKesson Co.* (2009)
8 47 Cal.4th 868, 709, is entirely misplaced. In *Roby*, a jury had already found the employer
9 liable for both disability discrimination *and* disability harassment. It was *uncontested that*
10 *substantial evidence supported the discrimination verdict*, and the issue before the Supreme
11 Court was whether that evidence of disability discrimination could also be considered in
12 determining whether the harassment verdict had evidentiary support. To the contrary, here,
13 Plaintiff wants to introduce purported evidence of discrimination that the that this Court has
14 already determined, in granting Burbank's motion for summary adjudication of issues, to be
15 *insufficient to support a cause of action for ethnic discrimination as a matter of law.*

16 Nor is the holding in *R&B Auto Center, Inc. v. Farmers Group, Inc.* (2006) 140
17 Cal.App.4th 327, 333 (Opp. at 2:21-22), applicable here. In that case, the trial court had
18 granted a motion *in limine* for "the exclusion of any evidence pertaining to R & B's unfair
19 competition claim," *effectively dismissing an entire cause of action* in ruling on a motion
20 *in limine*, which the appellate panel found to have been improper. (*Id.* at 358.) This is in no
21 way analogous to the instant motion which seeks the exclusion of evidence regarding two
22 specific events.

23 Contrary to Plaintiff's assertion in his Opposition, motions *in limine* *were* designed
24 to exclude irrelevant evidence where, as here, admitting such irrelevant evidence will waste
25 time at trial and there is a substantial risk that it will prejudice Burbank by confusing and
26 misleading the jury as to the issues it must decide at trial.

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28 ///

1 **II. PLAINTIFF DOES NOT DISPUTE, AND THUS CONCEDES, THAT**
2 **ADMISSION OF EVIDENCE REGARDING THE SED AND PLAINTIFF'S**
3 **FAILURE TO PROMOTE WILL NECESSITATE AN UNDUE**
4 **CONSUMPTION OF TIME AT TRIAL.**

5 Plaintiff's Opposition is primarily focused on arguing that Burbank has not shown
6 a "real probability of undue prejudice." (Opp. at 3:3-23.) He does not dispute, or even
7 address, the primary grounds for exclusion set out in Burbank's moving papers, which is the
8 fact that allowing evidence regarding the disbanding of SED and Plaintiff's failure to
9 promote to FTO will require Burbank to present extensive, otherwise-unnecessary evidence
10 regarding the actual reasons for the disbanding of the SED and the testing and selection
11 process for FTOs. (MIL No. 1 at 4:1-5.)

12 Rebutting Plaintiff's allegations that the SED was disbanded because of racial and
13 ethnic animus toward the officers assigned to the unit at the time (allegations which this
14 Court has already held to be meritless) would require extensive testimony by former BPD
15 Captain Janice Lowers and former BPD Chief of Police Tim Stehr regarding their actual
16 reasons for disbanding the unit, including, *inter alia*:

- 17 1) testimony regarding the increased scrutiny of SED in connection with
18 allegations and investigations of excessive force at the time;
- 19 2) testimony regarding budgetary and staffing concerns in connection with SED;
- 20 3) testimony regarding the understaffing of the SED at the time;
- 21 4) testimony regarding the ongoing need for more officers in the Patrol Division
22 at the time, and
- 23 5) testimony regarding the relative importance of having more "front-line"
24 officers patrolling the streets as compared to maintaining a detail of officers
25 limited to providing assistance to detectives.

26 *None of this has anything to do with harassment of the Plaintiff based on his*
27 *Armenian ethnicity*, which is the primary factual determination the jury will be making at
28 trial.

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1 Similarly, rebutting Plaintiff's allegation that his third-place ranking, rather than first
2 or second place, in the testing and selection process for an FTO position in 2009 was based
3 on his Armenian ethnicity (an allegation this Court also found to be meritless) would require
4 extensive, otherwise-unnecessary testimony from the Captain who oversees the testing for,
5 and selection of, FTOs (Pat Lynch), as well as others involved in that process including, *inter*
6 *alia*:

- 7 1) testimony regarding procedures for testing and rating of officers for FTO
8 positions, in general;
- 9 2) testimony regarding procedures used for the testing and rating of officers for
10 the 2009 FTO opening in question;
- 11 3) testimony regarding the process for selecting raters and the specific raters
12 selected for the 2009 selection;
- 13 4) testimony regarding the final scores of the candidates on that occasion; and
- 14 5) testimony regarding the secondary interviews of the top-scoring candidates.

15 ***Again, none of this has anything to do with Plaintiff's claims of ethnic harassment.***

16
17 In sum, allowing Plaintiff to raise these issues which have no relevance to his
18 surviving claim will substantially lengthen the trial and will only distract and confuse the jury
19 as to the factual matters it must actually decide. The evidence is properly excluded under
20 Evidence Code § 352.

21 DATED: June 6, 2011

BALLARD ROSENBERG GOLPER & SAVITT, LLP

22
23 By: 

PHILIP E. REZNIK

24 Attorneys for Defendant

25 CITY OF BURBANK, including the Police Department
26 of the City of Burbank
27
28

PROOF OF SERVICE

I am a citizen of the United States, and am employed in the County of Los Angeles in the office of a member of the bar of this Court at whose directions this service was made. I am over the age of 18, and not a party to the within action. My business address is Ballard, Rosenberg, Golper & Savitt, 500 North Brand Boulevard, Twentieth Floor, Glendale, California 91203-9946.

On June 6, 2011, I served the foregoing document described as: **DEFENDANT'S REPLY IN SUPPORT OF MOTION IN LIMINE NO. 1 TO EXCLUDE EVIDENCE OF (A) THE DISBANDING OF SED AND PLAINTIFF BEING RETURNED TO PATROL AND (B) PLAINTIFF NOT BECOMING AN FTO** on the interested parties in this action, by placing a true copy thereof in a sealed envelope addressed as follows:

Solomon E. Gresen, Esq.
Steven V. Rheuban, Esq.
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VIA FACSIMILE; and

X

(BY FEDEX) I am "readily familiar" with the firm's practice of collection and processing correspondence for delivery by Federal Express. Under that practice, in the ordinary course of business, it would be deposited with Federal Express on that same day with directions for next day delivery, with the Federal Express fees guaranteed to be paid by Ballard, Rosenberg, Golper & Savitt, LLP.

X

(BY ELECTRONIC MAIL) I sent the above-mentioned documents via electronic mail addressed as set forth above.

(BY MAIL) and personally placing such envelope with postage fully prepaid for collection and mailing on the above-referenced date following the ordinary business practices of this office. I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence, including said envelope, will be deposited with the United States Postal Service at Glendale on the above-referenced date.

(BY PERSONAL SERVICE) I delivered such envelope(s) by hand to the above-addressee(s).

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on June 6, 2011 at Glendale, California.


Leslie Rehers